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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/250,834	02/16/1999	MARY KATHERINE ROBINSON	5079D1-07-LA	2533
29668	7590	04/16/2004	EXAMINER	
PFIZER, INC. 201 TABOR ROAD MORRIS PLAINS, NJ 07950			CORBIN, ARTHUR L	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 04/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/250,834

Applicant(s)

ROBINSON ET AL

Examiner

ARTHUR L. COBBIN

Group Art Unit

1761

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

☒ Responsive to communication(s) filed on 1-21-03, 7-11-03

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

☒ Claim(s) 23-40

is/are pending in the application.

Of the above claim(s)

is/are withdrawn from consideration.

☐ Claim(s)

is/are allowed.

☒ Claim(s) 23-40

is/are rejected.

☐ Claim(s)

is/are objected to.

☐ Claim(s)

are subject to restriction or election requirement

Application Papers

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).

☐ All ☐ Some* ☐ None of the:

☐ Certified copies of the priority documents have been received.

☐ Certified copies of the priority documents have been received in Application No. _____

☐ Copies of the certified copies of the priority documents have been received

in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Reference(s) Cited, PTO-892

☐ Notice of Informal Patent Application, PTO-152

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Other _____

Office Action Summary

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 21, 2003 has been entered.

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

3. Claims 23-40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 23-31 are indefinite since it is not clear whether chewing gum is part of the composition claims. The language "said ingredient ... said gum" (claim 23, lines 2-3) seems to claim the presence of chewing gum. However, if chewing gum is not intended to be claimed, then "said ingredient being" should be changed to "wherein said ingredient is capable of being." Claims 32-40 are indefinite in not reciting what is cooled in claim 32, step b), which can be corrected by adding "the heated isomalt" after "cooling". Corrections are required without new matter.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 23-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cherukuri et al (4,961,935, column 13).

Applicant is referred to paragraph No. 3, Paper No. 13 and paragraph No. 4, Paper No. 18.

6. Claims 32-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cherukuri et al as applied to claims 23-31 above, and further in view of Tanaka et al (column 3, lines 35-43 and column 4, lines 47-49).

Applicant is referred to paragraph No. 4, Paper No. 13. Further, it would have been obvious to eliminate the flavor adding step with its function from the process of Tanaka et al if an unflavored product is desired.

7. Applicant's arguments filed July 11, 2003 have been fully considered but they are not persuasive. Cherukuri et al clearly discloses that the gum composition has improved crunch due to the presence of Palatinit (isomalt) as the bulking agent as compared with sorbitol or mannitol as a chewing gum bulking agent. If the coating itself was responsible for the crunchiness, as applicant suggests, then the type of bulking agent would be irrelevant. However, in Cherukuri et al it is the Palatinit which is responsible for the crunch.


In Tanaka et al, it would have been obvious to eliminate the flavoring step, as set forth above in paragraph No. 6. Further, although Tanaka et al requires an extrusion step, this is in conjunction with the cooling of the heated isomalt mixture, and is thus not precluded by applicant's recitation of "consisting essentially of".

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8. Any inquiry concerning this communication from the examiner should be directed to Arthur Corbin whose telephone number is (571) 272-1399. The examiner can generally be reached on Monday--Friday from 10:30 a.m. to 8:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone numbers for the organization where this application is assigned are (703) 872-9306 for regular communications and (703) 305-7115 for After Final communications.

A. Corbin/dh
April 5, 2004



ARTHUR L. CORBIN
PRIMARY EXAMINER
4-15-04